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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

RIN 0575-AC98

Multi-Family Housing Program Requirements to Reduce Financial Reporting Requirements

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed Rule.

SUMMARY: The Rural Housing Service (RHS) is proposing to amend regulations to change program requirements regarding financial reporting to align RHS requirements with those of the Department of Housing and Urban Development (HUD) which will reduce the burden on the borrower to produce multiple financial reports.

DATES: Written comments must be received on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER] to be assured for consideration.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW, Washington, D.C. 20250-0742.
- Hand Delivery/Courier: Submit written comments via Federal Express mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW, 7th Floor, Washington, D.C. 20024.
- All written comments will be available for public inspection during regular work hours at 300 7th Street, SW, 7th Floor, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Stephanie White, Director, Multi-Family Housing Portfolio Management Division, Rural Housing Service, Room 1263S - STOP 0782, 1400 Independence Avenue, SW, Washington, D.C. 20250-0782, Telephone: (202) 720-1615.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Classification

This proposed rule has been determined to be non-significant and, therefore was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Authority

The Multi-Family Housing program is administered, subject to appropriations, by the U.S. Department of Agriculture (USDA) as authorized under Sections 514, 515 and 516 of the Housing Act of 1949, as amended (42 U.S.C. 1484, 1485, and 1486).

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RHS has determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. This rule

does not impose substantial direct compliance costs on State and local Governments; therefore, consultation with the States is not required.

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) Unless otherwise specifically provided, all State and local laws that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandate Reform Act (UMRA)

Title II of the UMRA, Pub. L. 104-4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal Governments and on the private sector. Under section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and Final Rules with "Federal mandates" that may result in expenditures to State, local, or tribal Governments, in the aggregate, or to the private sector, of \$100 million or more in any one-year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal

Governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575-0189. This proposed rule contains no new reporting or recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

E-Government Act Compliance

Rural Development is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes.

Programs Affected

The programs affected by this regulation are listed in the Catalog of Federal Domestic Assistance under number 10.405-Farm Labor Housing Loans and Grants; 10.415-Rural Rental Housing Loans; and 10.427-Rural Rental Assistance Payments.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers

and responsibilities between the Federal Government and the Indian tribes. Thus, the proposed rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this proposed rule, they are encouraged to contact USDA's Office of Tribal Relations or Rural Development's Native American Coordinator at (720) 544-2911 or AIAN@usda.gov to request such consultation.

Executive Order 12372, Intergovernmental Consultation

These loans are subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

Non-Discrimination Policy

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](#) (PDF), found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA

office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S.

Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

Individuals who are deaf, hard of hearing or have speech disabilities and you wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).

Persons with disabilities who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Background:

Section 515(z)(1) of the Housing Act of 1949, as amended states that the Secretary shall require that borrowers in programs authorized by this section maintain accounting records in accordance with generally accepted accounting principles for all projects that receive funds from loans made or guaranteed by the Secretary. Since RHS considers 514 loans to have similar risks as 515 loans, the regulatory accounting requirements apply to both types of loans. See 7 CFR 3560.578.

RHS published an interim rule on November 26, 2004, (69 FR 69032-69176) to implement the consolidation of MFH's previous 14 separate regulations, with an effective date of February 24, 2005.

As part of the interim rule, RHS required that engagement reports be submitted with the annual financial reports for borrowers with 16 or more units. Borrowers with less than 16 units in their housing project are required to submit annual financial reports using a limited scope engagement. Engagement is currently defined at 7 CFR 3560.11.

RHS proposes to remove engagement requirements as well as unit-based requirements from 7 CFR 3560.11, 3560.301, 3560.302, 3560.303 and 3560.308 and replace it with risk-based requirements for audits utilizing a modified version of the HUD Office of Inspector General's (OIG's) Consolidated Audit Guide standard.

This proposed change is a result of RHS's participation in the White House's Domestic Policy Council's Rental Policy Working Group (RPWG) on an initiative to reduce duplications of requirements on customers, eliminate conflicting administrative requirements, and align program requirements in the affordable rental housing industry. The RPWG believes high-risk properties, which consists of properties that have combined federal financial assistance of \$500,000 or greater, should receive more stringent evaluation of financial performance. RHS agrees, and plans to implement a risk-based threshold to set the standard for audit guidelines. This will reduce the burden on project budgets, as multiple reports become unnecessary. Instead it will require financial reporting to include audits based on a modified version of the HUD OIG Consolidated Audit Guide, which are also acceptable to HUD.

Combined Federal financial assistance is defined as a combination of any or all of the sources identified below:

- The outstanding principal balance of a USDA Mortgage, a mortgage insured by the Federal Housing Administration (FHA) or HUD-held mortgages or loans (including flexible subsidy loans);
- Any USDA Rental Assistance or Project-based Section 8 assistance received during the fiscal year;
- Interest reduction payments received during the year (interest subsidy) and/or;
- Federal grant funds received during the year.

The Agency believes standardizing audit requirements is an important first step in aligning the financial reporting standards among various Federal and State agencies. The new policy eliminates a financial reporting burden by allowing owners who receive less than \$500,000 in combined Federal assistance to submit owner certified financial statements instead of audited financial statements.

Although the Agency is removing engagement requirements as it relates to the borrower's annual financial reporting requirements, Section 514 and 515 proposals for new construction are still subject to the agreed upon cost certification procedures set forth in 7 CFR 3560.72(b).

In addition to the changes in the annual reporting requirements outlined herein, the Agency is proposing two additional certifications to the Performance Standards required under 7 CFR 3560.308(c). The borrower will be asked to certify there have been no changes in project ownership other than those approved by the Agency and identified in the certification; and that, real estate taxes are paid in accordance with state and/or local requirements and are current.

List of Subjects in 7 CFR Part 3560

Aged loan programs-Agriculture, loan programs-Housing and Community Development, Low- and moderate-income housing, Public Housing, rent subsidies.

For the reasons set forth in the preamble, chapter XXXV, Title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3560 - DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

1. The authority citation for Part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

Subpart A - General Provisions and Definitions

2. Amend §3560.11 by removing the definition of "Engagement".

Subpart G - Financial Management

3. Section 3560.301 is revised to read as follows:

§3560.301 General.

This subpart contains requirements for the financial management of Agency-financed multi-family housing (MFH) projects, including accounts, budgets, and reports. Financial management systems and procedures must cover all housing operations and provide adequate documentation to ensure that program objectives are met.

4. Amend §3560.302 by revising paragraphs (a), (b) (1) and (2), and (e) (1) to read as follows:

§3560.302 Accounting, bookkeeping, budgeting, and financial management systems.

(a) General. Borrowers must establish the accounting, bookkeeping, budgeting and financial management procedures necessary to conduct housing project operations in a financially safe and sound manner. Borrowers must maintain records in a manner suitable for an audit, and must be able to report accurate operational results to the Agency from these accounts and records.

(b) * * *

(1) Borrowers may use a cash, accrual, or modified accrual method of accounting, bookkeeping, and budget preparations as long as they are prepared in accordance with the standards identified in §3560.308.

(2) Borrowers must describe their accounting, bookkeeping, budget preparation, and financial reporting procedures in their management plan.

* * * * *

(e) * * *

(1) Borrowers must retain all housing project financial records, books, and supporting material for at least three years after the issuance of their financial reports. Upon request, these materials will immediately be made available to the Agency, its representatives, the USDA Office of the Inspector General (OIG), or the General Accountability Office (GAO).

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5. Amend §3560.303 by revising paragraph (b) (1) (vi) (Q) to read as follows:

§3560.303 Housing project budgets.

* * * * *

(b) * * *

(1) * * *

(vi) * * *

(Q) Professional service contracts (audits, owner-certified submissions in accordance with §3560.302 (a) (2), tax returns, energy audits, utility allowances, architectural, construction, rehabilitation and inspection contracts, etc.)

* * * * *

6. Amend §3560.308 by:

a. Revising paragraphs (a) (1) and (2).

b. Removing paragraph (b).

c. Redesignating paragraphs (c) and (d) as (b) and (c) respectively.

d. Revising the newly designated (b) introductory text.

e. Adding paragraphs (b) (8) and (b) (9).

f. Revising the newly designated (c) (1).

The revisions and additions read as follows:

§3560.308 Annual financial reports.

(a) *General.* (1) Borrowers that receive \$500,000 or more in combined Federal financial assistance must include an independent auditor's report, financial statements and notes to the financial

statements, supplemental information containing Agency approved forms for project budgets and borrower balance sheets, report on internal controls and compliance, and a schedule of current and prior year finding and corrective actions (if applicable). Borrowers must include the audit with their annual financial reports submitted to the Agency. Federal Financial Assistance is defined in accordance with 2 CFR 200.40.

(2) Borrowers that receive less than \$500,000 in combined Federal financial assistance must submit annual owner certified financial statements presented in accordance with Generally Accepted Accounting Principles (GAAP). Owner-certified submissions will not include an auditor's opinion or auditor's report on compliance or internal controls. Borrowers may use a CPA to prepare this report.

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(b) *Performance standards.* All Borrowers must certify that the housing meets the performance standards below:

* * * * *

(8) There have been no changes in project ownership other than those approved by the Agency and Identified in the certification.

(9) Real estate taxes are paid in accordance with state and/or local requirements and are current.

(c) * * *

(1) Non-profit and public borrower entities subject to OMB Circular A-133 requirements must submit audits in accordance with 2 CFR part 200.

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Dated: July 9, 2015.

Tony Hernandez
Administrator
Rural Housing Service

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